# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

HEADWATER RESEARCH LLC

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD and SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants.

Case No. 2:23-CV-00103-JRG-RSP

SAMSUNG'S SUR-REPLY IN OPPOSITION TO HEADWATER'S MOTION TO AMEND DOCKET CONTROL ORDER (DKT. NO. 132)

Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America Inc. (collectively, "Samsung") hereby submit this sur-reply to correct a number of false statements in Headwater's Reply (Dkt. 137), which Headwater mischaracterizes as "major developments" taking place since September 8, 2024 (four days ago) that purportedly require yet another extension to the already agreed-upon DCO schedule. Reply at 1; Dkt. 133-1 at 4–5.

First, Headwater misstates that the parties' agreement on the latest amended schedule (Dkts. 130, 131) was "express[ly] condition[ed]" on Samsung offering Mr. Song for deposition the week of September 9th. *See* Dkt. 133-1 at 4–5. Headwater stated it "could" agree to take Mr. Song's deposition this week (on September 11, 12, or 13). Dkt. 133-1 at 4. Even assuming Headwater's suggested deposition dates for Mr. Song constituted a firm proposal, Samsung's email response does not contain any acceptance. *Id.* at 3. Nor does Headwater's email reflect that its agreement to the proposed schedule was "condition[ed]" on deposing Mr. Song this week. *Id.* at 4. The parties' positions have not changed and there has been no "major development."

Second, with respect to the scheduling of depositions of both Mr. Song and Mr. Kolotouros, neither Mr. Song nor Mr. Kolotouros had an agreed-upon deposition date on September 9th when Headwater agreed to the current schedule. This did not change by September 10th when Headwater filed its motion.<sup>1</sup> Again, no "major development." Incredibly, Headwater took 1.5 months to produce Headwater founder and CEO, Greg Raleigh for his 30(b)(1) deposition (noticed by Samsung on May 1, 2024; deposed on June 14, 2024), yet now complains that Samsung has not immediately made available for deposition two witnesses whose names were not uttered during the entire case until Headwater subpoenaed/noticed these individuals with only two weeks left in

<sup>&</sup>lt;sup>1</sup> Consistent with Headwater's discovery strategy, Headwater requested that Samsung be prepared to discuss deposition scheduling for Mr. Song and Mr. Kolotouros on the parties' September 10 meet-and-confer *less than one hour before* the meet-and-confer was set to begin.

the already-extended discovery period. Only Headwater is to blame for waiting until the end of fact discovery to subpoena Mr. Kolotouros and notice Mr. Song—conduct that has led to Headwater now manufacturing "development[s]" in an attempt to excuse its welching on the parties' agreed-upon schedule. *See* Opp. at 1.

Third, Headwater cannot credibly claim that Samsung's recent document production justifies reneging on its scheduling agreement. As explained in Samsung's opposition, Samsung began producing documents during Mr. Jwa's August 26-27 deposition at Headwater's request and produced more *in response to* Headwater's already filed motion to compel (Dkt. 122). Opp. at 2–3. Headwater fails to explain why mooting at least part of its motion to compel justifies a blank check to file yet more motions to compel. The deadline for motions to compel is also unrelated to whether the parties can "meaningfully meet and confer" about Headwater's recent request for additional deposition time with Mr. Jwa to question him about these documents. *See* Reply at 3–4.

In addition, the relevance of the at-issue documents remains anything but clear. Samsung has repeatedly asked Headwater to amend its infringement contentions to describe with specificity its infringement theories and Headwater has refused. Up until Mr. Jwa's August 26<sup>th</sup> deposition, Headwater's theory—as best Samsung could understand it—focused on and Firebase Cloud Messaging ("FCM"), *not* —which offers no push services independent from and FCM.<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> Based on this understanding, Samsung produced voluminous documentation, including and FCM user guides and specifications. It is unreasonable to expect Samsung to produce user guides and specifications for *unaccused features* merely because they make passing reference to FCM. *See* Reply at 3.

For the reasons set forth above and in Samsung's opposition, there is no good cause to modify the DCO to extend the deadline for motions to compel from the current deadline.

Dated: September 12, 2024 Respectfully submitted,

By: /s/ Thad C. Kodish

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### **CERTIFICATE OF CONFERENCE**

Counsel for Plaintiff and counsel for Defendants met and conferred at 2:30 p.m. CT on September 10, 2024, in compliance with the meet and confer requirements of Local Rule CV-7(h). Thereafter, counsel for Plaintiff and Defendant corresponded by email, wherein counsel for Defendants informed Plaintiff's counsel that Defendants opposed Plaintiff's instant motion.

/s/ Thad C. Kodish
Thad C. Kodish

#### CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I certify that the following document is authorized to be filed under seal pursuant to the Protective Order entered in this case.

/s/ Thad C. Kodish
Thad C. Kodish

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically with the Clerk of the Court of the Eastern District of Texas using the ECF System under seal on September 12, 2024 and served plaintiff with a copy via electronic mail.

/s/ Thad C. Kodish
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